

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TRUSTEES OF THE OPERATING ENGINEERS'
LOCAL 324 PENSION FUND, OPERATING
ENGINEERS' LOCAL 324 HEALTH
CARE PLAN, OPERATING ENGINEERS' LOCAL
324 VACATION & HOLIDAY FUND, OPERATING
ENGINEERS' LOCAL 324 RETIREE BENEFIT FUND,
OPERATING ENGINEERS' LOCAL 324 APPRENTICESHIP
FUND, and OPERATING ENGINEERS' LOCAL 324
DEFINED CONTRIBUTION PLAN,
Trust Funds Established and Administered
Pursuant to Federal Law,

Plaintiffs,

v.

Case No. 09-cv-10339
Hon. Gerald E. Rosen

D.A.V. CONTRACTING, INC., a Michigan
corporation, and DAVID VENTURA,
Individually.

Defendants.

DAVID J. SELWOCKI (P51375)
MATTHEW I. HENZI (P57334)
Sullivan, Ward, Asher & Patton, P.C.
Attorneys for Plaintiffs
1000 Maccabees Center
25800 Northwestern Highway
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DAVID VENTURA
In Pro Per
30499 Plymouth Road
Livonia, MI 48150

**PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT
AND DEFAULT JUDGMENT AGAINST GARNISHEE DEFENDANT**

NOW COME Plaintiffs, by and through their attorneys, SULLIVAN, WARD, ASHER &
PATTON, P.C., and for their Motion for Entry of Default and Default Judgment against Garnishee
Defendant state:

1. Plaintiff received a Judgment against Defendants D.A.V. Contracting, Inc., a Michigan corporation and David Ventura, Individually, on December 31, 2009, in the amount of \$25,320.22 plus continuing interest as set forth in the Judgment. As of August 27, 2010 the amount of unsatisfied judgment due was \$25,320.22 plus continuing interest.

2. On May 18, 2010, Plaintiff served upon Garnishee Defendant VMC Contracting, LLC (hereafter "VMC"), via certified mail, an original and one (1) copy of Request and Writ for Garnishment (Periodic) with regard to Defendants D.A.V. Contracting, Inc., a Michigan corporation and David Ventura (hereafter "Defendants"), along with a Garnishee Disclosure form and garnishee disclosure fee of \$6.00. (See copy of Request and Writ for Garnishment (Periodic) attached hereto as **Exhibit A** and copy of certified mail receipt as **Exhibit B**).

3. Pursuant to the terms of the Writ for Garnishment, Garnishee Defendant VMC was to deliver and mail copies of the verified Disclosure form to the Court, Plaintiffs' counsel and Defendants within fourteen (14) days after it was served with the Request and Writ for Garnishment. MCR 3.101(H).

4. Garnishee Defendant VMC, has failed to abide by the instructions as set forth in both the Request and Writ for Garnishment (Periodic) and has failed to abide by the provisions of MCR 3.101.

5. Plaintiffs are now entitled to an entry of default and default judgment against Garnishee Defendant VMC, for its failure to disclose and do other acts pursuant to Michigan Court Rule MCR 3.101(S) and MCR 2.603. (See Affidavit attached hereto as Exhibit B).

WHEREFORE, Plaintiffs hereby move this Court for entry of a default and default judgment against Garnishee Defendant VMC, in the amount of \$25,320.22, as set forth in the Garnishment, together with interest as set forth in the Judgment against Defendants, costs and

reasonable attorney fees and award such other and further relief as the Court deems equitable and just and is allowed by Michigan Court Rules and law.

Respectfully submitted,

s/Matthew I. Henzi
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Attorney for Plaintiffs
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mhenzi@swappc.com
P57334

Dated August 30, 2010
W0910579

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR ENTRY OF
DEFAULT AND DEFAULT JUDGMENT AGAINST GARNISHEE DEFENDANT**

NOW COME Plaintiffs, by and through their attorneys, Sullivan, Ward, Asher & Patton, P.C and for their Brief in Support of Motion for Entry of Default and Default Judgment Against Garnishee Defendant state that Plaintiffs rely upon the facts and law set forth in their Motion.

Respectfully submitted,

s/Matthew I. Henzi
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Attorney for Plaintiffs
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P57334

Dated: August 30, 2010
W0910579

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2010, my assistant, Tonya Green filed the foregoing document, with the Clerk of the Court using the ECF system.

Additionally, a copy of the foregoing document was mailed via First Class Mail to the following non-ECF participants:

**David Ventura
DAV Contracting, Inc.
30499 Plymouth Road
Livonia, MI 48150**

and

**David Ventura
5465 Warren Road
Ann Arbor, MI 48105**

and

**VMC Contracting, LLC
Attn: Phillip Ventura
3588 Plymouth Road #321
Ann Arbor, MI 48105**

I hereby declare that the statement above is true to the best of my knowledge, information and belief.

Respectfully submitted,

s/Matthew I. Henzi
Sullivan, Ward, Asher & Patton, P.C.
Attorney for Plaintiffs
25800 Northwestern Highway, Suite 1000
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Dated: August 30, 2010
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